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August 23, 2023

Honorable Joan M. Azrack, U.S.D.J.  
United States District Court  
Eastern District of New York  
100 Federal Plaza  
Central Islip, NY 11722

**Re:** *D'Aquino, et al v. Garda CL Atlantic, Inc.*  
Civil Case No. 16-cv-00641-JMA-SIL

*Adkins, et al. v. Garda Atlantic, Inc.*  
Civil Case No. 17-cv-02532-JMA-SIL

Dear Judge Azrack:

This law firm represents Garda CL Atlantic, Inc. ("Garda") in the above-referenced consolidated action. We write in opposition to Mr. Moser's letter motion requesting that Plaintiffs' Rule 12(b)(1) motion be granted without opposition (See ECF Dkt. No. 133).<sup>1</sup>

Mr. Moser's letter motion is patently frivolous. Indeed, on June 30, 2023, Garda unequivocally indicated its intent to oppose Plaintiffs' motion to dismiss by filing a letter motion requesting a conference and stay of the briefing schedule (See ECF Dkt. No. 132). Contrary to Plaintiffs' interpretation, Defendant requested the conference to address the fact that Mr. Moser either (a) served the motion to dismiss on behalf of Plaintiffs he knew were deceased, unreachable, or no longer sought his representation, or (2) lied about these matters to obtain Defendant's consent to an extension of the briefing schedule. (Id.)

In fact, *after* he filed his motion, Mr. Moser submitted an application to the Court to withdraw as counsel for three (3) of the plaintiffs on the grounds that one is deceased, one he is unable to contact and one no longer wants Mr. Moser to represent him.

To make matters worse, Mr. Moser emailed the undersigned on Monday, August 21, 2023, at 12:24 PM, asking the undersigned to "advise if you will be opposing the motion, absent which we will be filing the

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<sup>1</sup> Plaintiffs Kerem Bay, Lana Bongiovi, Clement Campbell, Alexander Cioffi, Angelo Caropola, Patrick Crain, David L. Cronk, Dennis DeLucie, Charles J. Engel, Benny Failla, Matthew Farrell, Robert Giani, John Lackenbauer, Michael McDowell, William Maher, John Rossi, Gary Sobek, Damian Sobers, and Cynthia Torres have joined the motion to dismiss.

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motion as ‘unopposed.’” Only one minute later, the undersigned responded to Mr. Moser and said, “I requested a court conference and stay of the briefing schedule until the court decides my request . . . . **JUST TO BE CLEAR, OF COURSE WE ARE OPPOSING THE MOTION!**” (emphasis and highlight in original). Despite this unambiguous response, Mr. Moser filed the motion to dismiss as “unopposed” hours later. We contacted Mr. Moser and requested that he voluntarily withdraw his motion which he falsely claims is unopposed and join defense counsel in contacting chambers to request a conference with Your Honor. He absurdly refused this request.

Mr. Moser’s conduct is egregious, yet not unexpected. Over the seven years during which this case has been pending, Mr. Moser has repeatedly defied the Court’s directives and refused common professional courtesies, as made clear above. In fact, Mr. Moser failed to serve his motion papers in accordance with the original briefing schedule set by the Court, and failed to ask the Court for relief, yet the Court *sua sponte* granted Mr. Moser an extension. He then requested an additional extension of time that Defendant courteously agreed to as well. For Mr. Moser to now claim that his motion was unopposed is frivolous.

Therefore, Defendant reiterates its request for a conference to address Mr. Moser’s misconduct and to adjourn the briefing schedule for Plaintiff’s motion to dismiss *sine die*.

Thank you for your consideration of Defendant’s request.

Respectfully Submitted,

LITTLER MENDELSON, P.C.

/s/ Lisa M. Griffith

Lisa M. Griffith